

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
Defendant

v.

APPLE, INC.,

Defendant,
Counterclaimant.

Case No. 4:20-CV-05640-YGR

DECLARATION OF HERBERT HOLZER IN
SUPPORT OF NON-PARTY MICROSOFT
CORPORATION'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF TRIAL
EXHIBITS

I, Herbert Holzer, declare as follows:

1. I am currently the Director of Software & Apps for Microsoft Digital Store at Microsoft Corporation. The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. In my current role at Microsoft, I am responsible for apps and software category business planning and management. I have been employed with Microsoft since April 2015. Based on my work experience, I am familiar with Microsoft's business strategies, sales data, and licensing practices as it relates to the Microsoft Store. Microsoft keeps such information confidential to protect itself and its partners from potential harm.

3. I understand that Epic Games, Inc. intends to submit the document designated PX-2478 that contains Microsoft confidential information as a trial exhibit in the above-captioned legal case, and that Apple, Inc. also intends to submit a version of the same document designated DX-5528 as a trial exhibit. I also understand Microsoft is concurrently filing a motion to seal portions of PX-2478, DX-5528, and other potential trial exhibits, and I make this declaration in support of that motion. I further understand that Microsoft is filing highlighted and sealed copies of the potential trial exhibits as part of its motion to seal. I have reviewed the documents designated PX-2478 and DX-5528, attached hereto as Exhibit A and Exhibit B, respectively, and

1 explain below why the highlighted portions of the documents contain sensitive and highly
2 confidential information that would potentially cause serious harm to Microsoft if publicly
3 released.

4 4. I have reviewed the documents designated PX-2478 and DX-5528, which are
5 documents entitled “Microsoft Store Policies & App Store Principles.” Microsoft treats the
6 information contained in PX-2478 and DX-5528 sensitively, and only discloses it to a select
7 group of individuals on a need-to-know basis.

8 5. The highlighted portions of PX-2478 and DX-5528 in the versions filed under seal
9 are confidential to Microsoft and would result in harm if publicly disclosed. In October 2020,
10 Microsoft adopted the principles for the Microsoft Store on Windows which are reflected at page
11 2 of the document. Microsoft is actively reviewing the way in which those principles interact with
12 Microsoft’s existing store policies. The highlighted information at page 3 reflects Microsoft’s
13 internal strategic plan for how Windows and Xbox will operate their stores in the long-term future
14 considering the newly adopted principles. Such information is highly sensitive, as it reflects
15 current business strategy and future plans. If Microsoft’s developers were to obtain such
16 information, it would disrupt the integrity of Microsoft’s current and ongoing internal store
17 policies review process.

18 6. The highlighted portion of PX-2478 at pages 7 and 9-12 are also confidential and
19 would result in harm if publicly disclosed. The highlighted information reflects three categories
20 of highly confidential partner-specific information: (1) revenue and sales, (2) store policy
21 exceptions and rationales, and (3) contractual terms. With respect to partner-specific revenue and
22 sales, PX-2478 discloses the degree to which Microsoft’s app and PC gaming partners contribute
23 to Microsoft’s app and PC gaming business and certain partners’ respective market share for that
24 business. If Microsoft’s app and PC gaming partners were to obtain such information, it would
25 place Microsoft at a competitive disadvantage during contract negotiations with those partners
26 because Microsoft partners with greater revenue and sales shares would have increased leverage
27 in negotiations that they would otherwise not have but for the disclosure of this information.
28 Similarly, disclosure of the partner-specific store policy exceptions, rationales for those

1 exceptions, and partner-specific contractual terms would put Microsoft at a competitive
2 disadvantage during contract negotiations with other partners who would begin requesting similar
3 exceptions or contractual terms. This would harm Microsoft's business.

4 7. The highlighted portion of PX-2478 at page 8 is likewise confidential and would
5 result in harm if publicly disclosed. The highlighted information reflects Microsoft's strategic
6 priorities and decision-making related to platform-specific Microsoft Store functionality, and
7 specific information related to customers. If Microsoft's platform partners were to obtain such
8 information, it would jeopardize Microsoft's current partner relationships.

9 8. The highlighted portion of PX-2478 at page 14 is confidential and would result in
10 harm if publicly disclosed. The highlighted information reflects Microsoft's information about its
11 Electronic Sell-Through ("EST") sales information on an individual user basis. If Microsoft's
12 competitors were to obtain such information, it would place Microsoft at a competitive
13 disadvantage because Microsoft's competitors could use the sales information to undercut
14 Microsoft's pricing on ESTs.

15 I declare under the penalty of perjury of the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed this 30th day of April 2021 in Redmond, Washington.

18
19 /s/ Herbert Holzer
Herbert Holzer

ATTESTATION

I, David P. Chiappetta, am the ECF user whose ID and password are being used to file the above Declaration. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Herbert Holzer has concurred in the aforementioned filing.

/s/ David P. Chiappetta
David P Chiappetta